

Development Consent

Section 89E of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning under delegation executed on 16 February 2015, I approve the Development Application referred to in schedule A, subject to the conditions in schedule B.

These conditions are required to:

- prevent, minimise, and/or offset adverse environmental impacts;
- set standards and performance measures for acceptable environmental performance;
- require regular monitoring and reporting; and
- provide for the ongoing environmental management of the Development.

Chris Wilson
Executive Director
Infrastructure and Industry Assessments

Sydney

13 April

2015

SCHEDULE A

Application No.:	SSD 5225
Applicant:	Penrith Lakes Development Corporation Pty Ltd
Approval Authority:	Minister for Planning
Land:	310/752021, 2/808684
Development:	<p>Nepean River Pump and Pipeline Project, including:</p> <ul style="list-style-type: none">• construction and operation of a pumping station located approximately 600m downstream of the Penrith Weir on the eastern embankment of the Nepean River to fill and maintain water levels in the Penrith Lakes Scheme;• a water supply pipeline extending from the Nepean River, via the pump station, to a discharge point approximately 80m inland within the Penrith Lakes Scheme boundary; and• ancillary infrastructure, including intake/discharge pipework and structures, and works to enable construction.

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DEFINITIONS

Act, the	<i>Environmental Planning and Assessment Act, 1979.</i>
Conditions of consent	The Minister's conditions of consent for the Development.
Construction	Includes all work in respect of the Development other than: <ul style="list-style-type: none"> a) survey, acquisitions, building/ road dilapidation surveys; b) investigative drilling, excavation, or salvage; c) minor clearing or translocation of native vegetation; d) establishing ancillary facilities/ construction work sites (in locations meeting the criteria identified in the Conditions of Consent); e) installation of environmental impact mitigation measures, fencing, enabling works; f) other activities determined by the Environmental Representative to have minimal environmental impact (e.g. minor access roads, minor adjustments to services/ utilities, etc). <p>Note - work where heritage, threatened species, populations or endangered ecological communities would be affected by that work is classified as construction, unless otherwise approved by the Secretary in consultation with the Office of Environment and Heritage.</p>
Council	Penrith City Council
Department, the	Department of Planning & Environment.
Development	Means the development consented to under this consent and as generally described in Schedule A.
DPI	Department of Primary Industries, includes the divisions of NSW Office of Water (NOW), Fisheries NSW, Agriculture NSW and Crown Lands.
EIS	Environmental Impact Statement
EEC	Endangered ecological communities
EPA	Environment Protection Authority
Heritage	Encompasses both Aboriginal and historic heritage including sites that predate European settlement, and a shared history since European settlement such as shared associations in pastoral landscapes as well as associations linked with the mission period.
Heritage Item	An item as defined under the <i>Heritage Act 1977</i> , and assessed as being of local, State and/ or National heritage significance, and/or an Aboriginal Object or Aboriginal Place as defined under the <i>National Parks and Wildlife Act 1974</i>
Minister, the	Minister for Planning.
OEH	Office of Environment and Heritage.
Operation	Means the operation of the Development, but does not include commissioning trials of equipment or temporary use of parts of the Development during construction.
Publicly available	Available for inspection by a member of the general public (for example available on an internet website).
Raw water	Water extracted from the Nepean River but before flowing through the treatment wetlands
Roads authority	For example, Roads and Maritime Services or Council as relevant.
Secretary, the	The Secretary of the Department of Planning and Environment.
Secretary's approval, agreement or satisfaction	A written approval from the Secretary (or nominee). Where the Secretary's approval, agreement or satisfaction is required under a condition of this consent, the Secretary will endeavour to provide a response within one month of receiving an approval, agreement or satisfaction request. The Secretary may ask for additional information if the approval, agreement or satisfaction request is considered incomplete. When further information is requested, the time taken for the Applicant to respond in writing will be added to the one month period.
Sensitive receiver	As defined by the Interim Construction Noise Guidelines (2009).

SCHEDULE B CONDITIONS OF CONSENT

PART A ADMINISTRATIVE CONDITIONS

Terms of Development Consent

- A1. In addition to meeting the specific performance criteria established under this consent, the Applicant shall implement all reasonable and feasible measures to prevent and/or minimise any harm to the environment that may result from the construction or operation of the Development.
- A2. The Applicant shall carry out Development generally in accordance with the:
- (a) State Significant Development Application SSD 5225;
 - (b) *Nepean River Pump and Pipeline – Environmental Impact Statement* (AECOM, September 2014);
 - (c) *Nepean River Pump and Pipeline Submissions Report* (AECOM, January 2015); and
 - (d) conditions of this consent.
- A3. If there is any inconsistency between the plans and documentation referred to in condition **A2**, the most recent document shall prevail to the extent of the inconsistency. However, conditions of this consent prevail to the extent of any inconsistency with any plan or documents referred to in condition **A2** or prepared as a result of this consent except where this consent explicitly allows it.
- A4. The Applicant shall comply with any reasonable requirement(s) of the Secretary arising from the Department's assessment of:
- (a) any reports, plans or correspondence that are submitted in accordance with this consent; and
 - (b) the implementation of any actions or measures contained within these documents.

Limits of Consent

- A5. This consent lapses 5 years after the date on which it is granted, in accordance with, and subject to the provisions of, section 4.53 of the Environmental, Planning and Assessment Act.

Operation of Pump and Pipeline

- A6. The Development must only be operated in accordance with a water access licence issued by NSW Office of Water and:
- (a) water ~~shall only be extracted at a flow~~ rate that does not exceed 1.0 m³/sec; and
 - (b) water extraction shall only occur to fill and maintain water levels in the Penrith Lakes Scheme within the operating tolerances of those lakes as defined in the *Penrith Lakes Development Corporation 2012 Water Management Plan: Stage 1*.

Statutory Requirements

- A7. The Applicant shall ensure that all licences, permits and approvals are obtained and maintained as required throughout the life of the Development. No condition of this consent removes the obligation for the Applicant to obtain, renew or comply with such licences, permits or approvals. The Applicant shall ensure that a copy of this consent and all relevant environmental approvals are available at all times during the construction and operation of the Development.
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PART B ENVIRONMENTAL PERFORMANCE AND MONITORING

Development Design Specifications

- B1. The Applicant shall design, construct, operate and maintain the Nepean River Pump and Pipeline Project to minimise erosion of the Nepean River bank and the risk to the pump and intake structure from erosion of the bank including:
- (a) ensuring the development does not increase local flooding risk;
 - (b) provides for a maximum surface velocity across the face of the intake screens at the water intake point not exceeding 0.15 metres per second;
 - (c) ensuring the water intake point lies below the water surface in the Nepean River in normal flow conditions and does not restrict fish passage;
 - (d) the design of the pump and pipeline infrastructure to be self-supporting and able to resist river flows and does not exacerbate erosion of the bank; and
 - (e) ensuring the pumping station can withstand inundation from a 1 in 100 year ARI flood event without significant damage to structural integrity. The control building and all associated electrical equipment shall be designed, constructed, operated and maintained at least 100mm above the 1 in 100 year ARI level.

Note: The design of the pump and pipeline infrastructure could be supported by the use of piles to support the infrastructure.

- B2. The Applicant is to prepare a detailed design report for the pump and pipeline infrastructure, in consultation with Crown Lands and NOW. The detailed design report is to be certified by an independent engineer, whose appointment has been approved by the Secretary, specialising in riverine infrastructure and submitted to the Secretary for approval prior to construction commencing. The detailed design report is to include consideration of the requirements of condition B1 and include:
- (a) Consideration of the *NSW Office of Water Guidelines for Controlled Activities*;
 - (b) consideration of the erosion behaviour of the Nepean River in the development area over the last 60 years;
 - (c) a condition assessment of the river bank at the pump location;
 - (d) the detailed design of the pump and pipeline infrastructure to be self-supporting and able to resist river flows;
 - (e) details of the telemetry, remote control and metering mechanisms to control the extraction of water; and
 - (f) measures to ensure the pump remains cleared of sediment and vegetation.

- B3. The Applicant is to design and construct the Development in consultation with Council in order to minimise conflicts with the future extension of the Great River Walk.

Biodiversity

- B4. The Applicant is to prepare a Biodiversity Offset Package in consultation with the Office of Environment and Heritage in accordance with the *Framework for Biodiversity Assessment* September 2014 to offset impacts to the River Flat Eucalypt Forest Endangered Ecological Community. The Biodiversity Offset Package shall be submitted to the Secretary for approval prior to the commencement of construction. The Offset Package is to include:
- (a) the extent and types of vegetation to be impacted;
 - (b) how the impacts to the vegetation are proposed to be offset*
 - (c) what objectives and biodiversity outcomes are to be achieved;
 - (d) final agreed suite of biodiversity offset measures to be implemented; and

- (e) a biodiversity offset management plan to ensure the management of the offset in perpetuity.

* Note this may include supplementary measures in accordance with policy principles outlined in the *Framework for Biodiversity Assessment*

- B5. The limit of clearing and/or disturbance for construction of the development shall be limited to the area described in the Environmental Impact Statement as indicated on Figure 5.2, unless otherwise agreed to by the Secretary. Temporary fencing is to be placed around the construction footprint in areas containing native vegetation. No vegetation is permitted to be directly or indirectly affected outside of this boundary.

Construction Hours

- B6. The Applicant shall only undertake construction associated with the Development that generates audible noise exceeding the noise management level outlined in Table 2 of the *Interim Construction Noise Guidelines* (2009) at any residential premises during the following hours:

- (a) 7:00 am to 6:00 pm, Mondays to Fridays, inclusive;
- (b) 8:00 am to 1:00 pm Saturday; and
- (c) at no time on Sundays or public holidays.

This condition does not apply in the event of a direction from police or other relevant authority for safety or emergency reasons.

- B7. The hours of construction specified under conditions **B6** of this consent may be varied with the prior written approval of the Secretary. Any request to alter the hours of construction specified under conditions **B6** shall be:
- (a) considered on a case-by-case basis;
 - (b) accompanied by details of the nature and need for activities to be conducted during the varied construction hours; and
 - (c) accompanied by sufficient information for the Secretary to reasonably determine that activities undertaken during the varied construction hours will not adversely impact on the acoustic amenity of residential premises in the vicinity of the site.

Dust Generation

- B8. The Applicant shall construct the Development with the objective of preventing visible emissions of dust from the site, including wind-blown and traffic-generated dust. Should visible dust emission occur at any time, the Applicant shall identify and implement all practicable dust mitigation measures, including cessation of relevant works, as appropriate, such that visible dust emissions cease.

Building Finishes and Rehabilitation

- B9. Prior to the commencement of construction of the Development the Applicant shall submit, for the approval of the Secretary, details of the finishes for the control building and rehabilitation of the river bank and pipeline corridor.

Waste Generation

- B10. The Applicant shall ensure that all waste generated by the Development is assessed, classified and disposed of in accordance with EPA's *Waste Classification Guidelines* (2014).

Impacts on Infrastructure and Utilities

- B11. The Applicant shall prepare road dilapidation reports prior to the commencement of construction and following the conclusion of construction for Lugard Street, the proposed access point during construction or any other Council managed roads proposed to be used during construction. Copies of the dilapidation report shall be

provided to Council. Any damage resulting from construction of the development that can be clearly attributed to the Applicant or its contractors, except that resulting from normal wear and tear, shall be repaired at the Applicant's cost and to the satisfaction of the Council. The Applicant may enter into a negotiated agreement to compensate for any road damage attributable to the development.

- B12. The Applicant shall identify (including, but not limited to the location and level of service) all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with, and/or are likely to be affected by the Development. The Applicant shall consult with the relevant provider of these utilities and make arrangements to adjust and/or relocate their services as required. The cost of any such adjustment and/or relocation of services must be borne by the Applicant.
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PART C Environmental Management, Reporting and Auditing

Construction Environmental Management Plan

- C1. The Applicant shall prepare and implement a Construction Environmental Management Plan for the Development in accordance with the *Guideline for the Preparation of Environmental Management Plans* (Department of Infrastructure, Planning and Natural Resources 2004). No construction associated with the Development shall commence until written approval of this plan has been received from the Secretary. The Plan must:
- (a) be submitted to the Secretary for approval no later than one (1) month prior to the commencement of construction or within such period otherwise agreed by the Secretary;
 - (b) include the following management Sub-plans:
 - (i) Erosion and Sediment Control Plan;
 - (ii) Flora and Fauna Management Plan;
 - (iii) Noise and Vibration Management Plan;
 - (iv) Traffic and Access Management Plan; and
 - (v) Heritage Management Plan.
- C2. The Applicant shall ensure that the following specific requirements are considered in developing the sub-plans or procedures identified in condition **C1**, but not limited to:
- (a) **Erosion and Sediment Control Plan** detailing measures to minimise erosion and discharge of sediment and other pollutants to land and/or water during site preparation and construction works. The Plan must be developed in consultation with Crown Lands and NSW Office of Water and include, but not limited to:
 - (i) identification of construction activities on land and within the Nepean River that could cause soil erosion or discharge of sediment or water pollutants from the site;
 - (ii) measures to minimise soil erosion or discharge of sediment or water pollutants from the site in accordance with the *Managing Urban Stormwater: Soils and Construction* (Landcom, 2004) including measures to be implemented during high flow events; and
 - (iii) contingency plans to be implemented in the event of flood events (including consideration of a range of flood events), fuel spills, erosion or scouring of riparian areas.
 - (b) **Flora and Fauna Management Plan** detailing measures to minimise impacts to terrestrial and aquatic flora and fauna during construction. The Plan must be prepared in consultation with Office of Environment and Heritage, Department of Primary Industries (NSW Fisheries) and Council and include but not limited to:
 - (i) plans showing the location of terrestrial and aquatic vegetation, important flora and fauna habitat and locations where threatened species, populations and ecological communities have been recorded within and adjacent to the Development;
 - (ii) identification of areas to be cleared and details of management measures (such as fencing, clearing procedures, removal and relocation of fauna during clearing, habitat tree management and construction worker education) to avoid any residual habitat damage or loss and to minimise or eliminate time lags between the removal and subsequent replacement of habitat.
 - (iii) procedures for the relocation of any fauna identified during construction including freshwater mussels;
 - (iv) rehabilitation details, including identification of flora species and measures for the management and maintenance of all rehabilitated areas including weed management measures; and

- (v) the objectives of the management measures and how the effectiveness of these measures would be monitored.
- (c) **Construction and Vibration Noise Management Plan** detailing measures to minimise impacts to sensitive receivers during construction. The Plan must be prepared in consultation with Environment Protection Authority and include but not limited to:
 - (i) identification of construction activities that may result in noise exceedances at the nearest residential receivers;
 - (ii) reasonable and feasible management measures to be implemented to minimise impacts to sensitive receivers;
 - (iii) procedures for monitoring construction noise; and
 - (iv) description of procedures to be undertaken if any non-compliance is detected.
- (d) **Traffic and Access Management Plan** detailing measures to minimise impacts to traffic and access during construction. The Plan must be prepared in consultation with the relevant roads authorities and include but not limited to:
 - (i) identification of all public roads to be used by construction traffic and roads to be impacted by construction;
 - (ii) measures to minimise the impact between the development and other road users including ensure construction traffic uses the identified roads in **C2(d)(i)**; and
 - (iii) a description of how the effectiveness of these management measures would be monitored.
- (e) **Heritage Management Plan** detailing measures to be implemented to manage Aboriginal and Historic heritage during construction, including:
 - (i) identification of all heritage items within close proximity to construction;
 - (ii) procedures to be implemented to adequately protect these heritage items; and
 - (iii) a procedure to manage unexpected heritage items identified during construction.

Compliance Reports

- C3. The Applicant shall prepare a Pre-Construction Compliance Report and a Pre-Operation Compliance Report to report compliance with the requirements of this consent prior to the commencement of construction and operation, as relevant. The Reports shall be submitted to the Secretary for approval at least one month prior to the commencement of construction, or each stage, or operation as relevant.

Independent Environmental Auditing

- C4. Within one year of the commencement of operation of the development, and then as may be directed by the Secretary, the Applicant or future owner/operator of the development shall commission a RABQSA certified independent person or team to undertake an environmental audit of the development. The Audit shall:
 - (a) be carried out in accordance with ISO 19011:2002 - *Guidelines for Quality and/or Environmental Management Systems Auditing*;
 - (b) assess compliance with the requirements of this consent, and other licences and approvals that apply to the Development;
 - (c) assess the environmental performance of the Development against the predictions made and conclusions drawn in the documents referred to under condition 1.1 of this consent; and
 - (d) review the effectiveness of the environmental management of the Development, including any environmental impact mitigation works.

An **Environmental Audit Report** shall be submitted to the Secretary within two months of the completion of the Audit, detailing the findings and recommendations of

the Audit and including a detailed response from the Applicant to any of the recommendations contained in the Report.

The Secretary may require the Applicant to undertake reasonable steps to address the findings or recommendations presented in the Report in relation to compliance with this consent. Any such steps shall be completed within such time as the Secretary may require.

Incident Reporting

- C5. The Applicant shall notify at the earliest opportunity*, the Environmental Representative, Secretary and any other relevant agency of any incident that has caused, or threatens to cause, material harm to the environment. Within 7 days of the date of the incident, the Applicant shall provide the Secretary and any relevant agency a detailed report on the incident which identifies measures which have or will be implemented to rectify the incident and a timeframe for implementation.

** note: this does not override the requirement to notify the Environment Protection Authority immediately in accordance with the Protection of Environment Operations Act 1997.*

- C6. The Applicant shall meet the requirements of the Secretary to address the cause or impact of any incident, as it relates to this consent, reported in accordance with condition **C5** of this consent, within such period as the Secretary may require.

ACCESS TO INFORMATION

- C7. Within three (3) months of the date of this consent, and as documents are progressively made available, or as otherwise agreed by the Secretary, the Applicant shall make copies of the following publicly available on its website:

- (a) all current statutory approvals and licences for the development;
- (b) all approved plans and programs required under the conditions of this consent;
- (c) a summary of the complaints register, updated monthly;
- (d) any independent environmental audit of the Development as required by Condition **C4**, and the Applicant's response to the recommendations in any audit;
- (e) any other matter required by the Secretary.

ENVIRONMENTAL REPRESENTATIVE

- C8. Prior to the commencement of construction of the Development, or as otherwise agreed by the Secretary, the Applicant shall nominate for the approval of the Secretary, a suitably qualified and experienced Environment Representative(s) that is independent of the design and construction personnel. The Applicant shall employ the Environment Representative(s) for the duration of construction and for at least 12 months after commencement of operation, or as otherwise agreed by the Secretary. The Environment Representative(s) shall:

- (a) provide advice to the Applicant and the Department in relation to the performance of environmental management of the Development;
- (b) monitor the Applicant's implementation of environmental management plans, monitoring programs and strategies required under this consent;
- (c) be responsible for considering and advising the Applicant on matters specified in the conditions of this consent, and other licences and approvals related to the environmental performance and impacts of the Development;
- (d) ensure that environmental auditing is undertaken in accordance with the consent or the Applicant's Environmental Management System(s) where one exists and has been accredited by the Secretary for use on the Development;
- (e) be given the authority to approve/reject minor amendments to the Construction and Operation Environment Management Plans. What constitutes a "minor" amendment shall be defined in the CEMP and OEMP required under conditions **C1** and **D1**;

- (f) be given the authority and independence to require reasonable steps be taken to avoid or minimise unintended or adverse environmental impacts, and failing the effectiveness of such steps, to direct that relevant actions be ceased immediately should an adverse impact on the environment be likely to occur; and
- (g) be consulted in responding to the community concerning the environmental management and performance of the Development where resolution of points of conflict between the Applicant and the community is required.

COMMUNITY INFORMATION, CONSULTATION AND INVOLVEMENT

- C9. A **Community Communication Strategy** shall be prepared and implemented to facilitate communication between the Applicant (and its contractor(s)), the Environmental Representative (see condition C8), the relevant council(s) and community stakeholders (particularly adjoining landowners) on the construction environmental management and operation of the Development. The Strategy shall include, but not be limited to:
- (a) identification of stakeholders to be consulted, including affected and adjoining landowners;
 - (b) procedures and mechanisms for the regular distribution of information to stakeholders on construction progress and key environmental management issues. The Strategy shall detail on structure, scope, objectives and frequency of information distribution ;
 - (c) procedures and mechanisms through which stakeholders can discuss or provide feedback to the Applicant and/or Environmental Representative in relation to the environmental management and delivery of the Development;
 - (d) procedures and mechanisms for Applicant response to enquiries or feedback from stakeholders in relation to environmental management and delivery of the Development; and
 - (e) procedures and mechanisms that would be implemented to resolve issues/disputes that may arise between parties on the matters relating to environmental management and the delivery of the Development. This may include the use of an appropriately qualified and experienced independent mediator.
- The Applicant shall maintain and implement the Strategy throughout construction and operation.

COMPLAINTS AND ENQUIRIES PROCEDURE

- C10. Prior to the commencement of construction, or as otherwise agreed by the Secretary, the Applicant shall ensure that the following are available for community enquiries and complaints for the duration of construction:
- (a) a 24 hour telephone number(s) on which complaints and enquiries about the Development may be registered;
 - (b) a postal address to which written complaints and enquires may be sent;
 - (c) an email address to which electronic complaints and enquiries may be transmitted; and
 - (d) a mediation system for complaints unable to be resolved.
- The telephone number, the postal address and the email address shall be published in newspaper(s) circulating in the local area prior to the commencement of construction and prior to the commencement of operation. This information shall also be provided on the website (or dedicated pages) required by this consent.
- C11. Prior to the commencement of construction, or as otherwise agreed by the Secretary, the Applicant shall prepare and implement a **Construction Complaints Management System** consistent with AS 4269: *Complaints Handling* and maintain the System for the duration of construction and operation of the Development.
- Information on all complaints received, including the means by which they were addressed and whether resolution was reached, with or without mediation, shall be maintained in a complaints register and included in the compliance reports required by

condition **C3** of this consent. The information contained within the System shall be made available to the Secretary on request.

PART D Operation Environmental Management

Operation Environmental Management Plan

- D1. The Applicant shall prepare and implement an Operation Environmental Management Plan for the Development in accordance with the *Guideline for the Preparation of Environmental Management Plans* (Department of Infrastructure, Planning and Natural Resources, 2004). Operation must not commence until written approval of this plan has been received from the Secretary. The Plan must:
- (a) be submitted to the Secretary for approval no later than one (1) month prior to the commencement of construction or demolition or within such period otherwise agreed by the Secretary;
 - (b) include the following Sub-plans:
 - (i) Water Quality Management Plan;
 - (ii) Soil and Water Management Plan;
 - (iii) Landscape and Rehabilitation Plan
- D2. The Applicant shall ensure that the following specific requirements are considered in developing the sub-plans or procedures identified in condition D1, but not limited to:
- (a) **Water Quality Management Plan.** The Water Monitoring Plan is to detail:
 - (i) procedures for monitoring water quality, extraction rates to be extracted from the Nepean River and methods to prevent and mitigate impacts to the aquatic ecology;
 - (ii) the raw water and other trigger levels that will govern when water will be extracted from the Nepean River and the mechanism by which extraction will be linked to real-time river flow information;
 - (iii) the maintenance regime for the intake pipe together with the use of any chemicals, chemical storage, transportation and disposal including details of the collection and disposal of any debris, plant matter and associated material;
 - (iv) consideration of this Plan, the Water Management Plan Stage 2 and the Lakes Operations Plan to manage water quality issues related to extraction from the Nepean River at the outlet structure and within the treatment wetlands (such as algal and plant blooms and elevated turbidity etc); and
 - (v) review mechanism to assess the effectiveness of the Water Quality Management Plan in being able to achieve the required water quality within the Penrith Lakes Scheme.

Note: It is not intended for this condition to result in any duplication of management plans. The Applicant can nominate an existing plan where it can be demonstrated that the requirements of this condition can be met by that plan.
 - (b) **Soil and Water Management Plan.** The Soil and Water Management Plan is to detail:
 - (i) procedures for monitoring and identifying erosion or stability issues at the development site including consideration of the *NSW Office of Water Guidelines for Controlled Activities*;
 - (ii) measures to be implemented to rehabilitate unstable or erosion affected areas identified;
 - (iii) review mechanisms to assess the effectiveness of the measures implemented to manage erosion and stability issues.
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